

## **SUMMARY OVERVIEW**

### **OF LAND BOARD SUBCOMMITTEE RECOMMENDATIONS**

The State Board of Land Commissioners established a subcommittee at its June 2007 meeting to review current grazing and cropland leasing procedures and to report back to the full Board with any recommended modifications. The Board expressed concern that the current process is not transparent and does not provide applicants with all relevant financial and management information necessary to making an informed bid. This overview summarizes (1) relevant Idaho constitutional and statutory requirements and (2) recommended modifications to current leasing procedures which will assist in ensuring that those requirements are satisfied in the conflict auction context.

**Constitutional and Statutory Requirements.** Article IX, section 8 of the Idaho Constitution requires the Land Board "to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the *maximum long term financial return* to the institution to which granted or to the state if not specifically granted." [Emphasis supplied.] Another portion of this provision conditions "disposal" of congressionally-granted state lands through "public auction." The Idaho Supreme Court construed the "maximum long term financial return" and the "public auction" requirements most recently in a two cases.

In *Idaho Watersheds Project v. State Board*, 133 Idaho 64, 982 P.2d 367 (1999), the Supreme Court invalidated Idaho Code § 58-310B insofar as it directed the Land Board to consider the long term return not only to the beneficiary schools but also to the State as a whole when making conflict lease determinations. The Court reasoned that "[r]ather than seeking to provide income to the schools and the state in general, Article IX, § 8 requires that the State consider *only* the 'maximum long term financial return' to the schools in the lease of school endowment public grazing lands." 133 Idaho at 67, 982 P.2d at 370 (emphasis supplied). Several years earlier in *Idaho Watersheds Project, Inc. v. State Board*, 128 Idaho 761, 766-67, 918 P.2d 1206, 1211-12 (1996), the Court broadly construed the term "disposal" in Article IX, section 8 to include the *leasing* of grazing lands.

Section 58-310, Idaho Code, incorporates both requirements where two applicants for the same lease exist. It mandates a public auction at which "premium bids"—*i.e.*, amounts in addition to the Board-established rental rates—are made. The statute also recognizes that the highest premium bid may not represent the best measure of such return by giving the Land Board authority to reject "any and all bids" for "fraud or collusion, or for any other reason." The Board therefore has discretion in making leasing decisions, but its determinations must comply *procedurally* with the public auction requirement and *substantively* with maximizing long term financial returns to the beneficiary schools.

**Recommended Leasing Process Modifications.** Current Idaho Department of Lands (IDL) leasing procedures with respect to certain classes of endowment lands can be improved to ensure compliance with the Board's procedural and substantive duties under the Constitution and relevant statutes. The recommended modifications summarized below relate to the leasing process where multiple applicants have applied to lease a parcel and their proposed uses are inconsistent with each being awarded the lease. The modifications' overall purposes are to make the auction process as fair as possible and to foster increased competition at the auctions themselves. They seek to accomplish these purposes in three principal ways:

- Applications will be authorized for competing uses. The proposed modifications permit applications for different uses, thereby creating the potential for greater financial returns. Currently, applications are limited to a particular use.
- Each applicant and IDL, prior to the auction being conducted, must reach agreement on the terms of a lease that will be executed if the applicant is selected by the Land Board following the auction. This requirement ensures that the applicant knows, prior to participating in the auction, what its costs will be if awarded the lease and enables the applicant to structure bids consistent with its needs and resources.
- IDL must develop and disclose to all lease applicants a list of criteria that will be used in structuring the lease terms. The criteria will address issues that pertain to maximizing long-term return to the parcel's beneficiaries, such as net income to the trust anticipated if a proposal is accepted and the short and long term consequences on future leasing of the particular parcel or adjacent state endowment lands under a proposed use. This modification will assist not only applicants in formulating lease terms or responding to terms proposed by IDL but also the Board in acting as a prudent investor manager in leasing determinations under Idaho Code § 58-307(4).

The Subcommittee further recommends increasing the maximum lease length for grazing, cropland, conservation and communication site leases from ten years to 20 years. This modification is intended to encourage competition for leases by providing to successful applicants greater certainty with respect to recapturing investments or making long-term business decisions. It would require an amendment to Idaho Code § 58-307(1).